



The Administrative Law Judge in his decision made two separate and distinct findings. First, he found claimant to be an independent contractor and not in an employer/employee relationship with respondents, Merchants Home Delivery and Levitz Furniture Corporation. Normally, this issue would be appealable to the Appeals Board. See K.S.A. 44-534a.

The Administrative Law Judge went on to say that the medical evidence in the file indicated that claimant had no further specific need for additional medical treatment at this time.

Claimant's request at preliminary hearing was for additional medical care with Dr. Hood for his knee injury.

K.S.A. 44-534a allows appeals from preliminary hearings regarding disputed issues of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made or whether certain defenses apply. These issues are considered jurisdictional for an Appeals Board review. The Appeals Board can further review decisions from preliminary hearings if it is alleged under K.S.A. 44-551 that the Administrative Law Judge has exceeded his or her jurisdiction in granting or denying the relief requested. The Administrative Law Judge, by denying claimant's request for medical treatment based upon a finding that the medical evidence does not support a need for treatment, has decided an issue which is beyond the jurisdiction of the Appeals Board on an appeal from a preliminary hearing decision. As such, it renders moot the jurisdictional issues regarding whether claimant suffered accidental injury arising out of and in the course of his employment and regarding whether claimant is an independent contractor or an employee. The Appeals Board, if it did reverse the Administrative Law Judge on those issues, would still not be in a position to grant claimant benefits as the preliminary finding by the Administrative Law Judge that claimant is not in need of medical treatment is a nonappealable issue.

Wherefore, as the Appeals Board finds as it does not have the jurisdiction to review the Administrative Law Judge's denial of claimant's need for additional medical treatment, the issues of accidental injury arising out of and in the course of employment and independent contractor versus employee are rendered moot.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated February 5, 1996, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: Kathryn P. Barnett, Kansas City, KS  
John Rathmel, Overland Park, KS  
Bryce Moore, Overland Park, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director